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LEGALLY MINE, LLC

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

KASRA ELIASHIEH, M.D., on behalf
of himself and all others similarly
situated,

Plaintiff,

vs.

LEGALLY MINE, LLC,

Defendant.

Case No.: 3:18-cv-03622-JSC

**ANSWER OF DEFENDANT
LEGALLY MINE, LLC TO
FIRST AMENDED COMPLAINT
AND AFFIRMATIVE DEFENSES**

Judge: Hon. Jacqueline S. Corley

Defendant, Legally Mine, LLC, ("Legally Mine"), files an answer to
Plaintiff's First Amended Complaint and Affirmative Defenses as follows:

JURISDICTION AND VENUE

1. Legally Mine admits that it is an LLC registered under the laws of Utah, and its two members are listed as Utah residents. Legally Mine is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations, and on that basis denies the remaining allegations.

1 2. Legally Mine admits that it enters into contracts with physicians such as
2 Plaintiff who conduct business in California. To the extent a response is
3 required, Legally Mine denies the allegations.

4 3. Legally Mine admits that it seeks to do business and does business in this
5 District. It denies that it has transacted business with Plaintiff in this
6 District. To the extent a response is required, Legally Mine denies the
7 allegations.

8 **FACTUAL ALLEGATIONS**

9 4. Legally Mine admits that Plaintiff has quoted selectively from portions of
10 the Legally Mine website. Legally Mine denies the remaining allegations of
11 paragraph 4 of the Amended Complaint.

12 5. Legally Mine admits that the selected statements appear in promotional
13 material or on the company website. Legally Mine admits that it does not
14 sell malpractice insurance. Legally Mine denies the remaining allegations
15 of paragraph 5 of the Amended Complaint.

16 6. Legally Mine admits that the selected statements appear in promotional
17 material or on the company website. Legally Mine denies the remaining
18 allegations of paragraph 6 of the Amended Complaint.

19 7. Legally Mine admits the allegations of paragraph 7 of the Amended
20 Complaint.

21 8. Legally Mine denies the allegations of paragraph 8 of the Amended
22 Complaint.

23 9. Legally Mine denies the allegations of paragraph 9 of the Amended
24 Complaint.

25 10. Legally Mine admits that it offers multiple products and services, but
26 denies the remaining allegations of paragraph 10 of the Amended
27 Complaint.

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- 1 11. Legally Mine denies the allegations in paragraph 11 of the Amended
2 Complaint.
- 3 12. Legally Mine denies the allegations in paragraph 12 of the Amended
4 Complaint.
- 5 13. Legally Mine denies the allegations of paragraph 13 of the Amended
6 Complaint.
- 7 14. Legally Mine denies the allegations in paragraph 14 of the Amended
8 Complaint.
- 9 15. Legally Mine denies the allegations in paragraph 15 of the Amended
10 Complaint.
- 11 16. Legally Mine admits that Plaintiff has quoted selectively from materials
12 produced by Legally Mine. Legally Mine denies the remaining allegations
13 of paragraph 16.
- 14 17. Legally Mine admits that Plaintiff has quoted selectively from materials
15 produced by Legally Mine. Legally Mine denies the remaining allegations
16 of paragraph 17.
- 17 18. Legally Mine admits that Plaintiff has quoted selectively from materials
18 produced by Legally Mine. The remaining allegations reference a contract
19 which is not attached. Legally Mine denies the remaining allegations of
20 paragraph 18.
- 21 19. The allegations in paragraph 19 reference a contract which is not attached,
22 and does not require an admission or denial. Legally Mine denies the
23 remaining allegations of paragraph 19.
- 24 20. Legally Mine admits that Leland McKay spoke at an event in Chicago, but
25 denies the remaining allegations of paragraph 20.
- 26 21. Legally Mine admits that Leland McKay spoke at an event in Chicago, but
27 denies the remaining allegations of paragraph 21.

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- 1 22. Legally Mine is without sufficient knowledge or information to form a
2 belief as to the truth of the allegations of paragraph 22, and on that basis,
3 denies the same.
- 4 23. Legally Mine is without sufficient knowledge or information to form a
5 belief as to the truth of the allegations of paragraph 23, and on that basis,
6 denies the same.
- 7 24. Legally Mine is without sufficient knowledge or information to form a
8 belief as to the truth of the allegations of paragraph 24, and on that basis,
9 denies the same.
- 10 25. Legally Mine admits that Plaintiff has quoted selectively from materials
11 produced by Legally Mine in paragraph 25. The referenced contract is not
12 attached to the Amended Complaint. The allegations include incomplete
13 statements of the Court's previous actions in this case—none of which
14 require an admission or denial. To the extent that a response is required,
15 Legally Mine denies the allegations in paragraph 25 of the Amended
16 Complaint.
- 17 26. The allegations reference a contract which is not attached. Legally Mine
18 denies the allegations in paragraph 26 of the Amended Complaint.
- 19 27. The allegations reference a contract which is not attached. Legally Mine
20 denies the allegations in paragraph 27 of the Amended Complaint.
- 21 28. The allegations reference a contract which is not attached. Legally Mine
22 denies the allegations in paragraph 28 of the Amended Complaint.
- 23 29. The allegations reference a contract which is not attached. Legally Mine
24 denies the allegations in paragraph 29 of the Amended Complaint.
- 25 30. The allegations reference a contract which is not attached. Plaintiff has
26 selectively quoted from materials produced by Legally Mine, but Legally
27 Mine denies the remainder.

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- 1 31. Legally Mine denies the allegations in paragraph 31 of the Amended
- 2 Complaint.
- 3 32. Legally Mine admits that Plaintiff has quoted selectively from materials
- 4 produced by Legally Mine in paragraph 32.
- 5 33. Legally Mine denies the allegations in paragraph 33.
- 6 34. Legally Mine denies the allegations in paragraph 34.
- 7 35. The allegations in paragraph 35 reference documents which are not
- 8 attached to the Amended Complaint. Legally Mine admits that it provided
- 9 other documents to Plaintiff, but denies the remainder.
- 10 36. The allegations in paragraph 36 reference documents which are not
- 11 attached to the Amended Complaint. Legally Mine admits that it provided
- 12 additional documents to Plaintiff, but denies the remainder.
- 13 37. Legally Mine denies the allegations in paragraph 37 of the Amended
- 14 Complaint.
- 15 38. The referenced contract is not attached to the Amended Complaint. To the
- 16 extent that an additional response is required, Legally Mine denies the other
- 17 allegations in paragraph 38.
- 18 39. Legally Mine denies the allegations in paragraph 39 of the Amended
- 19 Complaint.
- 20 40. The referenced contract is not attached to the Amended Complaint. To the
- 21 extent that an additional response is required, Legally Mine denies the other
- 22 allegations in paragraph 40.
- 23 41. Legally Mine denies the allegations in paragraph 41 of the Amended
- 24 Complaint.
- 25 42. The referenced contract is not attached to the Amended Complaint. To the
- 26 extent that an additional response is required, Legally Mine denies the other
- 27 allegations in paragraph 42.

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- 1 43. Legally Mine denies the allegations in paragraph 43 of the Amended
2 Complaint.
- 3 44. Legally Mine denies the allegations in paragraph 44 of the Amended
4 Complaint.
- 5 45. Legally Mine is without sufficient knowledge or information to form a
6 belief as to the truth of the allegations of paragraph 45, and on that basis,
7 denies the same.
- 8 46. Legally Mine denies the allegations in paragraph 46 of the Amended
9 Complaint.
- 10 47. Legally Mine denies the allegations in paragraph 47 of the Amended
11 Complaint.
- 12 48. Legally Mine is without sufficient knowledge or information to form a
13 belief as to the truth of the allegations of paragraph 48, and on that basis,
14 denies the same.
- 15 49. Legally Mine is without sufficient knowledge or information to form a
16 belief as to the truth of the allegations of paragraph 49, and on that basis,
17 denies the same.
- 18 50. Legally Mine is without sufficient knowledge or information to form a
19 belief as to the truth of the allegations of paragraph 50, and on that basis,
20 denies the same.
- 21 51. Legally Mine is without sufficient knowledge or information to form a
22 belief as to the truth of the allegations of paragraph 51, and on that basis,
23 denies the same.
- 24 52. Legally Mine denies the allegations in paragraph 52 of the Amended
25 Complaint.
- 26 53. Legally Mine is without sufficient knowledge or information to form a
27 belief as to the truth of the allegations of paragraph 53, and on that basis,
28 denies the same.

- 1 54. The referenced contract is not attached to the Amended Complaint. To the
2 extent that an additional response is required, Legally Mine denies the other
3 allegations in paragraph 54.
- 4 55. Legally Mine denies the allegations in paragraph 55 of the Amended
5 Complaint.
- 6 56. Legally Mine denies the allegations in paragraph 56 of the Amended
7 Complaint.
- 8 57. To the extent this paragraph requires a response, Legally Mine denies the
9 allegations in paragraph 57 of the Amended Complaint, and all
10 subparagraphs included in paragraph 57.
- 11 58. To the extent this paragraph requires a response, Legally Mine denies the
12 allegations in paragraph 58 of the Amended Complaint.
- 13 59. To the extent this paragraph requires a response, Legally Mine denies the
14 allegations in paragraph 59 of the Amended Complaint.
- 15 60. To the extent this paragraph requires a response, Legally Mine denies the
16 allegations in paragraph 60 of the Amended Complaint.
- 17 61. To the extent this paragraph requires a response, Legally Mine denies the
18 allegations in paragraph 61 of the Amended Complaint.
- 19 62. Legally Mine denies the allegations in paragraph 62, and incorporates the
20 other denials and defenses outlined in its answer to the Amended
21 Complaint.
- 22 63. Legally Mine denies the allegations in paragraph 63 of the Amended
23 Complaint.
- 24 64. Legally Mine denies the allegations in paragraph 64, and incorporates the
25 other denials and defenses outlined in its answer to the Amended
26 Complaint.
- 27 65. Legally Mine denies the allegations in paragraph 65 of Amended
28 Complaint.

1 66. Legally Mine denies the allegations in paragraph 66, and incorporates the
2 other denials and defenses outlined in its answer to the Amended
3 Complaint.

4 67. Legally Mine denies the allegations in paragraph 67 of Amended
5 Complaint

6 68. Legally Mine denies the allegations in paragraph 68, and incorporates the
7 other denials and defenses outlined in its answer to the Amended
8 Complaint.

9 69. Legally Mine denies the allegations in paragraph 69 of Amended
10 Complaint

11 70. Legally Mine denies the allegations in paragraph 70, and incorporates the
12 other denials and defenses outlined in its answer to the Amended
13 Complaint.

14 71. Legally Mine denies the allegations in paragraph 71 of Amended
15 Complaint

16 72. Legally Mine admits that Legally Mine used a form which utilized a credit
17 card number. Plaintiff has not attached the form. To the extent that
18 paragraph 72 requires any additional response, Legally Mine denies the
19 remainder.

20 73. Legally Mine is without sufficient knowledge or information to form a
21 belief as to the truth of the allegations of paragraph 73, and on that basis,
22 denies the same.

23 74. To the extent paragraph 74, and its subparts require a response, Legally
24 Mine incorporates its other denials and defenses, and otherwise denies the
25 allegations in these paragraphs.

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1 **FIRST AFFIRMATIVE DEFENSE**

2 The Complaint fails to state a claim upon which relief may be granted.

3 **SECOND AFFIRMATIVE DEFENSE**

4 Plaintiff's claims are barred by the doctrine of waiver, release, laches,
5 estoppel, and/or unclean hands.

6 **THIRD AFFIRMATIVE DEFENSE**

7 Plaintiff's claims are barred because Plaintiff is not a class representative, has
8 not satisfied the provisions of Fed. R. Civ. P. 23, and cannot certify a class.

9 **FOURTH AFFIRMATIVE DEFENSE**

10 This Court does not have jurisdiction because Plaintiff is not a class
11 representative, has not satisfied the provisions of Fed. R. Civ. P. 23, cannot certify a
12 class, and there is not a sufficient amount in controversy for the Court to maintain
13 jurisdiction under 28 U.S.C. §1332.

14 **FIFTH AFFIRMATIVE DEFENSE**

15 This Court lacks jurisdiction because the parties agreed to venue and
16 jurisdiction in Utah.

17 **SIXTH AFFIRMATIVE DEFENSE**

18 Plaintiff's claim to function as a class representative is barred because
19 Plaintiff executed a class action waiver with Legally Mine.

20 **SEVENTH AFFIRMATIVE DEFENSE**

21 Plaintiff's claims are barred by the doctrine of accord and satisfaction.

22 **EIGHTH AFFIRMATIVE DEFENSE**

23 Plaintiff's claims are barred because Plaintiff has not sustained damages.

24 **NINTHAFFIRMATIVE DEFENSE**

25 Plaintiff's claims are barred because the provisions of Cal. Civ. Code
26 §1689.20-24 are void for vagueness, are overbroad, unenforceable or
27 unconstitutional.

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TENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the applicable statute of limitations.

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by his own conduct, including offsets under the doctrine of anticipatory breach, breach of contract, breach of the covenant of good faith and fair dealing, fraud, or unjust enrichment.

TWELFTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred because Legally Mine has fulfilled all of its contractual obligations.

THIRTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred because there is a failure to satisfy real-party in interest requirements.

FOURTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred because of unilateral or mutual mistake.

FIFTEENTH AFFIRMATIVE DEFENSE

Plaintiff is unable to certify a national class, represent parties in other states outside of California, or assert violations of California consumer statutes on behalf of individuals residing outside of California.

SIXTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred because he failed to comply with the terms of his contract with Legally Mine.

SEVENTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred because Legally Mine has tendered the amount of money at issue to Plaintiff as a refund.

EIGHTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred because he has failed to mitigate his damages.

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1 **WHEREFORE, DEFENDANT PRAYS** that Plaintiff take nothing by his
2 complaint and the Court dismiss it with prejudice.

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4 Dated: May 18, 2020

OSTERGAR LAW GROUP P.C.

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7 By: /s/ John E. Lattin IV
8 John E. Lattin IV
9 Attorneys for Defendant
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PROOF OF SERVICE

I am at least 18 years of age, and not a party to the within action. I am a resident of or employed in the County of Orange, State of California. My address is 9110 Irvine Center Drive, Irvine, California 92618. My electronic address is: cslovenec@ostergar.com

On May 18, 2020, I served the foregoing document(s) described as:

ANSWER OF DEFENDANT LEGALLY MINE, LLC TO FIRST AMENDED COMPLAINT AND AFFIRMATIVE DEFENSES

on the interested parties identified in this action by the means of service designated below:

David Michael Rosenberg-Wohl Hershenson Rosenberg-Wohl, APC 315 Montgomery St., 8th Fl. San Francisco, CA 94104 415-829-4330 Email: david@hrw-law.com	<i>Attorneys for Plaintiff</i>
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___ (By Mail Service) By depositing the sealed envelope(s) with the United States Postal Service at Yorba Linda, CA, with postage thereof fully paid. (C.C.P. §1013 and/or §1101 et seq.)

X (By Electronic Transmission) I caused the described document(s) described herein electronically transmitted and served via the Pacer system. The above-listed counsel have consented to electronic service and have been automatically served by the Notice of Electronic Filing, which is automatically generated by CM/ECF at the time said document was filed, and which constitutes service pursuant to FRCP 5(b)(2)(E) and L.R. 5-1(h).

___ (By Overnight Courier) Pursuant to C.C.P. §1013(c)(d)), I caused described document(s) to be deposited in a box or other facility regularly maintained by the express service carrier, or delivered to an authorized courier or driver authorized by an express service carrier to receive documents, in an envelope or package designated by that express service carrier with delivery fees paid or provided for, and addressed to the person(s) as indicated above on (Date:) August 3, 2015, at (Location:) FedEx 5645 E. La Palma Avenue, Suite 165, Anaheim, CA 92807.

I certify that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on May 18, 2020, at Irvine, California.

/s/ *Christina Slovenec*
CHRISTINA SLOVENEC